

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE

KJM CAPITAL TRANSPORTATION
FUND, LCC, et al.,

Debtors

Case No 6:19-bk-6302-CCJ
Chapter 11

Jointly Administered¹

APPLICABLE DEBTORS:

GANTT TRUCKING, LLC
INTERIDE TRANSPORT, LC
SUNCO TRUCKING, LLC

Case No. 6:19-bk-6303-CCJ
Case No. 6:19-bk-6306-CCJ
Case No. 6:19-bk-6308-CCJ

**MERCEDES-BENZ FINANCIAL SERVICES USA LLC AND DAIMLER TRUST'S
MOTION FOR RELIEF FROM STAY, OR,
IN THE ALTERNATIVE, ADEQUATE PROTECTION**

Mercedes-Benz Financial Services USA LLC and Daimler Trust (collectively, “MBFS”),
file their *Motion for Relief from Stay, or, in the Alternative Adequate Protection* (the “Motion”),
and state as follows:

INTRODUCTION

1. MBFS financed Gantt Trucking, LLC and Interide Transport, LLC’s purchase of certain rolling stock and equipment (collectively the “Equipment Collateral”) and leased other rolling stock and equipment (the “Leased Equipment”) to Gantt Trucking, LLC, Interide Transport, LLC, and Sunco Trucking, LLC (collectively, “Debtors”) under the Notes and Security Agreements and Lease Agreements (collectively, the “Loan and Lease Agreements”) described in paragraph 6 below.

¹ Jointly Administered Cases: KJM Capital Transportation Fund, LLC, Case No. 6:19-bk-6302-CCJ; Gantt Trucking, LLC, Case No. 6:19-bk-6303-CCJ; Interide Transport, LC, Case No. 6:19-bk-6306-CCJ; Sunco Trucking, LLC, Case No. 6:19-bk-6308-CCJ; Cold Carrier Logistics, LLC, Case No. 6:19-bk-6312-CCJ; Gantt Holdings, LLC, Case No. 6:19-bk-6313-CCJ; and Watkins Refrigerated, LLC, Case No. 6:19-bk-6314-CCJ.

2. As of the Petition Date, Debtors were indebted at least to MBFS as follows:

Gantt Trucking, LLC	\$5,218,568.67
Interide Transport LC	\$5,649,998.81
Sunco Trucking, LLC	\$8,041,972.54

3. In addition, as of the Petition Date, the Debtors' accounts with MBFS were delinquent in the following amounts:

Gantt Trucking, LLC	\$312,244.09
Interide Transport LC	\$1,088,579.89
Sunco Trucking, LLC	\$398,702.71

4. In total, MBFS leases 127 pieces of equipment to Debtors, and has financed Gantt Trucking, LLC and Interide Transport, LLC's purchase of an additional 72 units of rolling stock.

5. This Court should grant MBFS stay relief to recover its collateral and leased assets. MBFS lacks adequate protection for many reasons. First, the Debtors' pre- and post-petition performance reflects an inability to make any meaningful debt service or lease payments to any of its secured creditors or leasing entities, including MBFS. Second, the Debtors' have made no post-petition payments relative to MBFS's rapidly depreciating Leased Equipment and Equipment Collateral. Indeed, the Debtor have missed the past four months of payments totaling approximately \$2 million. Third, the Debtors have no equity in MBFS's Equipment Collateral.

BACKGROUND

6. The Loan and Lease Agreements consist of the following:

The Gantt Trucking, LLC Agreements

- (a) Note and Security Agreement dated May 27, 2016, pursuant to which MBFS loaned Gantt Trucking, LLC the sum of \$624,465.00 to finance the purchase of five 2017 Freightliner

CA1255LP tractors. A copy of the May 27, 2016 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit A**.

The Equipment Collateral financed under the May 27, 2016 Note and Security Agreement consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000122414001	2017	FREIGHTLINER	CA125SLP	1FUJGLDR0HLJA5226
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR2HLJA5227
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR4HLJA5228
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR6HLJA5229
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR2HLJA5230

(b) Note and Security Agreement dated May 27, 2016, pursuant to which MBFS loaned Gantt Trucking, LLC the sum of \$1,039,144.00 to finance the purchase of eight 2017 Freightliner CA1255LP Tractors. A copy of the May 27, 2016 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit B**.

The Equipment Collateral financed under the May 27, 2016 Note and Security Agreement consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000122419001	2017	FREIGHTLINER	CA125SLP	1FUJGLDR1HLJA5235
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR3HLJA5236
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR4HLJA5231
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR5HLJA5237
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR6HLJA5232
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR7HLJA5238
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR8HLJA5233
	2017	FREIGHTLINER	CA125SLP	1FUJGLDRXHLJA5234

(c) Note and Security Agreement dated December 19, 2016, pursuant to which MBFS loaned Gantt Trucking, LLC the sum of \$3,175,495.00 to finance the purchase of 22 2017 Freightliner CA1255LP Tractors. A copy of the December 19, 2016 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit C**.

The Equipment Collateral financed under the December 19, 2016 Note and Security Agreement consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000313876001	2017	FREIGHTLINER	CA125SLP	1FUJGLDR0HLJH6409
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR0HLJH6412
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR1HLJH6399
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR1HLJH6404
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR1HLJH6418
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR2HLJH6413
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR3HLJH6405
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR4HLJH6400
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR4HLJH6414
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR5HLJH6406
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR6HLJH6396
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR6HLJH6415
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR7HLJH6407
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR7HLJH6410
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR8HLJH6397
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR8HLJH6402
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR8HLJH6416
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR9HLJH6408
	2017	FREIGHTLINER	CA125SLP	1FUJGLDR9HLJH6411
	2017	FREIGHTLINER	CA125SLP	1FUJGLDRXHLJH6398
	2017	FREIGHTLINER	CA125SLP	1FUJGLDRXHLJH6403
	2017	FREIGHTLINER	CA125SLP	1FUJGLDRXHLJH6417

(d) Open-End Lease Agreement dated July 28, 2017 attached as **Exhibit D** and related schedules:

- i. Open-End Schedule A dated August 1, 2017 pursuant to which MBFS leased to Gantt Trucking, LLC five 2018 Freightliner Cascadia Tractors for total rent of \$495,357.60. Copies of the August 1, 2017 schedule and titles to the Leased Equipment are attached as **Exhibit E**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000529211001	2018	FREIGHTLINER	CA125SLP	1FUJGLDR0JLJH9414
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR2JLJH9415
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR5JLJH9411
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR7JLJH9412
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR9JLJH9413

- ii. Open-End Schedule A dated August 7, 2017 pursuant to which MBFS leased to Gantt Trucking, LLC five 2018 Freightliner Cascadia Tractors for

total rent of \$495,357.60. Copies of the August 7, 2017 schedule and titles to the Leased Equipment are attached as **Exhibit F**

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000530772001	2018	FREIGHTLINER	CA125SLP	1FUJGLDR4JLJH9416
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR6JLJH9417
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR6JLJH9420
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR8JLJH9418
	2018	FREIGHTLINER	CA125SLP	1FUJGLDRXJLJH9419

- iii. Open-End Schedule A dated August 14, 2017 pursuant to which MBFS leased to Gantt Trucking, LLC three 2018 Freightliner Cascadia Tractors for total rent of \$297,406.56. Copies of the August 14, 2017 schedule and titles to the Leased Equipment are attached as **Exhibit G**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000542527001	2018	FREIGHTLINER	CA125SLP	1FUJGLDR1JLJH9423
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR8JLJH9421
	2018	FREIGHTLINER	CA125SLP	1FUJGLDRXJLJH9422

- iv. Open-End Schedule A dated March 15, 2018 pursuant to which MBFS leased to Gantt Trucking, LLC 14 2018 Freightliner Cascadia Tractors for total rent of \$1,384,234.56. Copies of the March 15 2018 schedule and titles to the Leased Equipment are attached as **Exhibit H**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000748209001	2018	FREIGHTLINER	CA125SLP	1FUJGLDR0JLJH9428
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR0JLJH9431
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR1JLJH9437
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR2JLJH9429
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR2JLJH9432
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR3JLJH9424
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR4JLJH9433
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR5JLJH9425

2018	FREIGHTLINER	CA125SLP	1FUJGLDR6JLJH9434
2018	FREIGHTLINER	CA125SLP	1FUJGLDR7JLJH9426
2018	FREIGHTLINER	CA125SLP	1FUJGLDR8JLJH9435
2018	FREIGHTLINER	CA125SLP	1FUJGLDR9JLJH9427
2018	FREIGHTLINER	CA125SLP	1FUJGLDR9JLJH9430
2018	FREIGHTLINER	CA125SLP	1FUJGLDRXJLJH9436

The Interide Transport, LC Agreements

(e) Note and Security Agreement dated July 9, 2015 pursuant to which MBFS loaned Interide Transport, LC the sum of \$1,050,595.00 to finance the purchase of seven 2016 Freightliner Cascadia tractors. A copy of the July 9, 2015 Note and Security agreement and copies of the titles to the Equipment Collateral financed thereunder are attached as **Exhibit I**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000032217001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR1GSGV4315
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR3GSGV4316
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR5GSGV4303
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR7GSGV4304
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR8GSGV4313
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR9GSGV4305
	2016	FREIGHTLINER	CA125SLP	3AKJGLDRXGSGV4314

(f) Note and Security Agreement dated August 18, 2015 pursuant to which MBFS loaned Interide Transport, LC the sum of \$1,049,048.00 to finance the purchase of seven 2016 Freightliner Cascadia tractors. Copies of the August 18, 2015 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit J**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000035271001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR0GSGV4256
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR3GSGV4252
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR5GSGV4253
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR6GSGV4407
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR7GSGV4254
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR8GSGV4408
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR9GSGV4255

(g) Note and Security Agreement dated September 21, 2015 pursuant to which MBFS loaned Interide Transport, LC the sum of \$605,138.00 to finance the purchase of four 2016 Freightliner Cascadia tractors. Copies of the September 21, 2015 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit K**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000037891001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR2GSGZ5195
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR4GSGZ5201
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR6GSGZ5202
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR8GSGZ5203

(h) Note and Security Agreement dated November 30, 2015 pursuant to which MBFS loaned Interide Transport, LC the sum of \$742,085.00 to finance the purchase of five 2016 Freightliner Cascadia tractors. Copies of the November 30, 2015 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit L**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000043430001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR1GSHA0155
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR3GSHA0156
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR5GSHA0157
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR8GSHA0153
	2016	FREIGHTLINER	CA125SLP	3AKJGLDRXGSHA0154

(i) Note and Security Agreement dated December 7, 2015 pursuant to which MBFS loaned Interide Transport, LC the sum of \$759,690.00 to finance the purchase of five 2016 Freightliner Cascadia tractors. Copies of the December 7, 2015 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit M**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000043700001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR3GSHA0190
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR5GSHA0188
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR5GSHA0191
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR7GSHA0189

2016	FREIGHTLINER	CA125SLP	3AKJGLDR7GSHA0192
------	--------------	----------	-------------------

(j) Note and Security Agreement dated December 28, 2015 pursuant to which MBFS loaned Interide Transport, LC the sum of \$1,063,566.00 to finance the purchase of seven 2016 Freightliner Cascadia tractors. Copies of the December 28, 2015 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit N**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000045024001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR0GSHA0194
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR2GSHA0195
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR6GSHA0197
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR8GSHA0198
	2016	FREIGHTLINER	CA125SLP	3AKJGLDRXGSHA0199

(k) Open-End Lease Agreement dated April 14, 2017 attached as **Exhibit O** and related schedules:

- i. Open-End Schedule A dated April 14, 2017 pursuant to which MBFS leased to Interide Transport, LC 16 2018 Freightliner CA125SLP tractors for total rent of \$1,660,338.24. Copies of the April 14, 2017 schedule and titles to the Leased Equipment are attached as **Exhibit P**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000424380001	2018	FREIGHTLINER	CA125SLP	1FUJGLDR0JLJH9459
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR0JLJH9462
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR1JLJH9468
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR1JLJH9471
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR2JLJH9463
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR3JLJH9469
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR3JLJH9472
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR4JLJH9464
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR5JLJH9473
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR6JLJH9465
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR7JLJH9460
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR8JLJH9466
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR9JLJH9458

2018	FREIGHTLINER	CA125SLP	1FUJGLDR9JLJH9461
2018	FREIGHTLINER	CA125SLP	1FUJGLDRXJLJH9467
2018	FREIGHTLINER	CA125SLP	1FUJGLDRXJLJH9470

- ii. Modified TRAC Schedule A dated November 9, 2018 pursuant to which MBFS leased to Interide Transport, LC ten 2019 Freightliner Cascadia 126 tractors for total rent of \$1,043,596.80. Copies of the November 9, 2018 schedule and titles to the Leased Equipment are attached as **Exhibit Q**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000991549001	2019	FREIGHTLINER	PT126SLP	3AKJHHDR0KSKM5710
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR0KSKM5724
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR2KSKM5711
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR2KSKM5725
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR3KSKM5720
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR4KSKM5726
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR5KSKM5721
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR6KSKM5727
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR7KSKM5722
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR9KSKM5723

- iii. Open-End Schedule A dated August 4, 2017 pursuant to which MBFS leased to Interide Transport, LC four 2018 Freightliner CA125SLP tractors for total rent of \$404,631.84. Copies of the August 4, 2017 schedule and titles to the Leased Equipment are attached as **Exhibit R**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000529201001	2018	FREIGHTLINER	CA125SLP	1FUJGLDR0JLJH9476
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR2JLJH9477
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR7JLJH9474
	2018	FREIGHTLINER	CA125SLP	1FUJGLDR9JLJH9475

- (l) Texas Note and Security Agreement dated July 5, 2019 pursuant to which MBFS loaned Interide Transport, LC the sum of \$222,148.50 to finance the purchase of four 2016

Freightliner CA125SLP tractors. Copies of the July 5, 2019 Note and Security Agreement and titles to the Equipment Collateral financed thereunder are attached as **Exhibit S**.

The Equipment Collateral consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5001271226001	2016	FREIGHTLINER	CA125SLP	3AKJGLDR3GSGW7230
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR5GSGW7231
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR7GSGW7229
	2016	FREIGHTLINER	CA125SLP	3AKJGLDR7GSGW7232

The Sunco Trucking, LLC Agreements

(m) Open-End Lease Agreement dated April 14, 2017 attached as **Exhibit T** and related schedules:

- i. Open-End Schedule A dated May 22, 2017 pursuant to which MBFS leased to Sunco Trucking, LLC 40 2018 Freightliner CA125SLP tractors for total rent of \$4,058,745.12. Copies of the May 22, 2017 schedule and titles to the Leased Equipment are attached as **Exhibit U**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000469562001	2018	FREIGHTLINER	CA125SLP	3AKJGLDR0JSHP1049
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR0JSHP1052
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR0JSHP1083
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR1JSHP1044
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR1JSHP1058
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR1JSHP1061
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR1JSHP1089
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR2JSHP1036
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR2JSHP1053
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR2JSHP1084
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR3JSHP1045
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR3JSHP1059
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR3JSHP1062
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR4JSHP1037
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR4JSHP1040
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR4JSHP1054
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR4JSHP1085
	2018	FREIGHTLINER	CA125SLP	3AKJGLDR5JSHP1046

2018	FREIGHTLINER	CA125SLP	3AKJGLDR5JSHP1063
2018	FREIGHTLINER	CA125SLP	3AKJGLDR6JSHP1038
2018	FREIGHTLINER	CA125SLP	3AKJGLDR6JSHP1041
2018	FREIGHTLINER	CA125SLP	3AKJGLDR6JSHP1055
2018	FREIGHTLINER	CA125SLP	3AKJGLDR6JSHP1086
2018	FREIGHTLINER	CA125SLP	3AKJGLDR7JSHP1047
2018	FREIGHTLINER	CA125SLP	3AKJGLDR7JSHP1050
2018	FREIGHTLINER	CA125SLP	3AKJGLDR7JSHP1064
2018	FREIGHTLINER	CA125SLP	3AKJGLDR7JSHP1081
2018	FREIGHTLINER	CA125SLP	3AKJGLDR8JSHP1039
2018	FREIGHTLINER	CA125SLP	3AKJGLDR8JSHP1042
2018	FREIGHTLINER	CA125SLP	3AKJGLDR8JSHP1056
2018	FREIGHTLINER	CA125SLP	3AKJGLDR8JSHP1087
2018	FREIGHTLINER	CA125SLP	3AKJGLDR8JSHP1090
2018	FREIGHTLINER	CA125SLP	3AKJGLDR9JSHP1048
2018	FREIGHTLINER	CA125SLP	3AKJGLDR9JSHP1051
2018	FREIGHTLINER	CA125SLP	3AKJGLDR9JSHP1065
2018	FREIGHTLINER	CA125SLP	3AKJGLDR9JSHP1082
2018	FREIGHTLINER	CA125SLP	3AKJGLDRXJSHP1043
2018	FREIGHTLINER	CA125SLP	3AKJGLDRXJSHP1057
2018	FREIGHTLINER	CA125SLP	3AKJGLDRXJSHP1060
2018	FREIGHTLINER	CA125SLP	3AKJGLDRXJSHP1088

- ii. Modified TRAC Schedule A dated August 5, 2018 pursuant to which MBFS leased to Sunco Trucking, LLC eight 2019 Freightliner PT126SLP tractors for total rent of \$825,647.04. Copies of the August 5, 2018 schedule and titles to the Leased Equipment are attached as **Exhibit V**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000833588001	2019	FREIGHTLINER	PT126SLP	3AKJHHDR1KSKM5716
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR3KSKM5717
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR4KSKM5712
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR5KSKM5718
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR6KSKM5713
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR7KSKM5719
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR8KSKM5714
	2019	FREIGHTLINER	PT126SLP	3AKJHHDRXKSKM5715

- iii. Modified TRAC Schedule A dated July 31, 2018 pursuant to which MBFS leased to Sunco Trucking, LLC eight 2019 Freightliner PT126SLP tractors

for total rent of \$829,189.44. Copies of July 31, 2018 schedule and titles to the Leased Equipment are attached as **Exhibit W**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000885839001	2019	FREIGHTLINER	PT126SLP	3AKJHHDR0KSKM5688
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR0KSKM5691
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR2KSKM5689
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR2KSKM5692
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR4KSKM5693
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR6KSKM5694
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR8KSKM5695
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR9KSKM5690

- iv. Modified TRAC Schedule A dated July 31, 2018 pursuant to which MBFS leased to Sunco Trucking, LLC to finance the lease of eight 2019 Freightliner PT126SLP tractors for total rent of \$831,654.24. Copies of the July 31, 2018 schedule and tiles to the Leased Equipment are attached as **Exhibit X**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000885896001	2019	FREIGHTLINER	PT126SLP	3AKJHHDR1KSKM5697
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR1KSKM5702
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR3KSKM5698
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR3KSKM5703
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR5KSKM5699
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR8KSKM5700
	2019	FREIGHTLINER	PT126SLP	3AKJHHDRXKSKM5696
	2019	FREIGHTLINER	PT126SLP	3AKJHHDRXKSKM5701

- v. Modified TRAC Schedule A dated July 31, 2018 pursuant to which MBFS leased to Sunco Trucking, LLC six 2019 Freightliner PT126SLP tractors for total rent of \$625,368.96. Copies of the July 31, 2018 schedule and titles to the Leased Equipment are attached as **Exhibit Y**.

The Leased Equipment consists of the following:

<u>Account Number</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>
5000885999001	2019	FREIGHTLINER	PT126SLP	3AKJHHDR0KSKM5707
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR2KSKM5708
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR4KSKM5709
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR5KSKM5704
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR7KSKM5705
	2019	FREIGHTLINER	PT126SLP	3AKJHHDR9KSKM5706

7. All obligations and indebtedness owing by any Debtor to MBFS are guaranteed by each other Debtor pursuant to the terms of a continuing cross-guaranty dated April 14, 2017. A copy of the cross-guaranty is attached as **Exhibit Z**.

8. MBFS holds a properly perfected first lien and unavoidable purchase money security interest in the Equipment Collateral securing Debtor's performance of all of Debtor's obligations to MBFS, including all obligations arising under the Loan and Lease Agreements. MBFS' security interest in the Equipment Collateral is properly perfected through endorsement on the certificates of titles to the Equipment Collateral.

9. MBFS holds title to the Leased Equipment. The Lease Agreements are TRAC or modified TRAC leases and are "true leases."

10. Debtor has defaulted under the Loan and Lease Agreements. As of the Petition Date, the Debtors owed MBFS under the Loan and Lease Agreements, without defense, setoff, or counterclaim, at least the following amounts, exclusive of attorney fees and costs:

Gantt Trucking, LLC	\$5,218,568.67
Interide Transport LC	\$5,649,998.81
Sunco Trucking, LLC	\$8,041,972.54

11. According to Debtors' Schedules, the Equipment Collateral is worth \$10.2M. MBFS expects that the Equipment Collateral will depreciate on a daily basis in the ordinary course of Debtors' use of the Equipment Collateral at the rate of up to 2.5% per month.²

ARGUMENT

12. As a condition to the Debtors' continued use, sale, and retention of the Equipment Collateral, MBFS is entitled to adequate protection pursuant to Sections 361, 362, and 363 of the Bankruptcy Code and to be afforded protection against loss arising from such use.

Cause Exists to Grant MBFS Relief From the Automatic Stay

13. Under 11 U.S.C. § 362(d), "on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . by terminating, annulling, modifying or conditioning such stay – (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; (2) with respect to a stay of an act against property . . . if – (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization."

14. Here, the stay should be lifted both for cause under Section 362(d)(1) and because Debtors have no equity in the Equipment Collateral and no prospect of an effective reorganization under Section 362(d)(2).

A. Lack of Adequate Protection.

15. A lack of adequate protection is cause to lift the stay.

16. Adequate protection is the protection of a creditor's "interest in property" from any decrease in "value" attributable to the automatic stay. *In re Briggs Transp. Co.*, 780 F.2d 1339,

² MBFS has not at this time not completed its own independent evaluation of the Equipment Collateral and expressly reserves the right to have the Equipment Collateral appraised and valued for any purpose in the bankruptcy case, including for purposes of supporting this motion.

1434 (8th Cir. 1986), *see also In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994) (“threat” of a decline in a secured creditor’s collateral constitutes a prima facie case for lack of adequate protection under § 362(d)(1)), *In re Jones*, 189 B.R. 13 (Bankr. E.D. Okla. 1995) (secured creditor lacks adequate protection for purposes of obtaining relief from automatic stay if there is a threat of decline in value of property serving as collateral), *In re Cason*, 190 B.R. 917, 924 (Bankr. N.D. Ala. 1995) (where there is a possibility of a diminution of a creditor’s collateral interest, a debtor may be required to provide the creditor with adequate protection, such as periodic cash payments).

17. Here, the Equipment Collateral is depreciating from Debtors’ use and operation of it. MBFS’ interest in the Equipment Collateral cannot be adequately protected without cash payments to compensate MBFS for that decrease in value.

18. Unfortunately, however, Debtors simply cannot afford to make adequate protection payments. According to Debtors’ 6-week budget, Debtors are not generating cash on a consolidated basis even without including debt service or lease payments due MBFS. See Revised 6 Week Budgets [Dkt. 59].

B. Other Cause to Lift the Stay.

19. Except for lack of adequate protection, ‘cause’ is not defined by Section 362(d)(1). Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay.” *In re Trump Entm’t Resorts, Inc.*, 526 B.R. 116, 120 (Bankr. D. Del. 2015) (quoting *In re The SCO Group, Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007)).

20. Beginning on November 29, 2019 – 60 days after the Petition Date- Debtors are required to “timely perform” their obligations to MBFS under the Lease Agreements. Section 365(d)(5). The lease payments owing MBFS by all Debtors total \$274,946.00 each month.

21. As noted above, Debtors simply do not have the means to make the lease payments. Debtors’ inability to comply with their obligations under Section 365(d)(5) is cause to lift the automatic stay.

C. Debtors have no equity in the Equipment Collateral and no prospects of successfully reorganizing.

22. Accepting Debtors’ \$10.2M valuation of the Equipment Collateral for purposes of this Motion, Debtors have no equity in the Equipment Collateral since it secures obligations owing MBFS of nearly \$19M.

23. Debtors have the burden of proving that the Equipment Collateral is necessary for an effective reorganization. See 11 U.S.C. § 362(d); *In re Diversified Energy Venture*, 311 B.R. 712, 717 (Bankr.W.D.Pa.2004). As explained by the United States Supreme Court, property is necessary to an effective reorganization when it is “essential for an effective reorganization that is in prospect.” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest*, 484 U.S. 365, 375–77, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988) (emphasis in original). Accordingly, there must be “a reasonable possibility of a successful reorganization within a reasonable time.” *Id.* See *In re Terra Mar Associates*, 3 B.R. 462 (Bankr. Conn.1980)(while in single asset real estate cases property may be indispensable, “reasonable possibility” standard does not include a hope that somewhere, someone will fund an arrangement or refinance the mortgage with the debtor).

24. Here, given the Debtor’s financial condition and the severe liquidity shortfall confronting the Debtors, there is no reasonable prospect of a successful reorganization. As a result, the stay should be lifted under § 362(d)(2).

In the Alternative, MBFS is entitled to Adequate Protection Payments.

25. In the alternative, MBFS requests that the Court condition Debtors' continued use of the Equipment Collateral and Leased Equipment on entry of an order granting MBFS adequate protection, including periodic cash payments.

26. Section 363(e) of the Bankruptcy Code provides that an entity is entitled to adequate protection of an interest in property that is used by the debtor. 11 U.S.C. § 363(e).

27. The purpose of adequate protection is to insure a secured creditor receives the essential benefit of its bargain. *In re Briggs Transp. Co.*, 780 F.2d at 1342.

28. Adequate protection is mandatory and the burden of proposing and providing adequate protection is on the debtor. *See In re Metromedia Fiber Network, Inc.*, 290 B.R. 487 (Bankr. S.D.N.Y. 2003); *In re Miller*, 55 B.R. 49, 50 (Bankr. D.D.C. 1985).

29. If the automatic stay is not lifted, MBFS is entitled to adequate protection, including periodic cash payments to compensate MBFS for the diminution in value of the Equipment Collateral. *See* 11 U.S.C. § 361(1) (adequate protection may be provided by requiring the trustee to make a cash payment or periodic cash payments to the secured creditor).

30. In addition to periodic cash payments, adequate protection should include a requirement that Debtor: (a) an order directing Debtors to timely make all lease payments owing MBFS under the Lease Agreements; (b) maintain adequate insurance against loss of the Equipment Collateral and Leased Equipment; (c) maintain the Equipment Collateral and Leased Equipment; (d) timely pay all taxes, assessments and other fees or claims that could become a lien or encumbrance on the Equipment Collateral or Leased Equipment; (e) segregate and immediately pay over to MBFS all proceeds from any sale or other disposition of any of the Equipment Collateral; (f) provide access to Debtor's books and records; and (g) provide, in form satisfactory

to MBFS, a detailed accounting of the location and condition of the Equipment Collateral and Leased Equipment.

WHEREFORE, MBFS requests the entry of an order: (i) terminating and/or modifying the automatic stay with respect to the Equipment Collateral and Leased Equipment or, in the alternative, (ii) requiring the Debtor to provide adequate protection of MBFS' interest in the Equipment Collateral and Leased Equipment, including periodic adequate protection payments, and prompt lease payments owing under the Lease Agreements and grant MBFS such further and additional relief as the Court deems proper and just.

Dated: November 6, 2019

/s/ Donald R. Kirk

Donald R. Kirk (FBN 0105767)

E-mail: dkirk@carltonfields.com

John J. Lamoureux (FBN 835218)

E-mail: jlamoureux@carltonfields.com

Carlton Fields Jordan Burt, P.A.

P.O. Box 3239

Tampa, FL 33601-3239

Telephone: (813) 223-7000

Facsimile: (813) 229-4133

Stephen B. Grow, Esq. (MIN P39622)

Pro Hac Vice Admission Pending

Email: sgrow@wnj.com

Warner Norcross & Judd LLP

900 Fifth Third Center

111 Lyon Street NW

Grand Rapids, MI 49503-2487

Telephone: (616) 752-2158

Facsimile: (616) 222-2158

Mercedes-Benz Financial Services USA, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2019, I electronically filed the foregoing Notice of Appearance with the Clerk of Court by using the Court's CM/ECF system thereby serving all registered users in this case and by U.S. Mail to all parties on the attached mailing matrix not currently registered to receive electronic notifications.

/s/ Donald R. Kirk

Attorney